To be argued by:
Kenneth L. Wagner
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APL No. APL-2022-00046
Appellate Division, Fourth Department Docket No. CA 20-00745
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Court of Appeals of the State of New York

CITY OF SYRACUSE,

Petitioner-Appellant,

For a Decision and Order Pursuant to Article 75
of the Civil Practice Law and Rules

– against –

SYRACUSE POLICE BENEVOLENT ASSOCIATION, INC.,

Respondent-Respondent.

BRIEF FOR RESPONDENT-RESPONDENT

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DISCLOSURE STATEMENT

In accordance with § 500.1(f) of the Court's Rules, the Respondent-Respondent discloses that it is a not-for-profit corporation and no parents, subsidiaries, or affiliates exist.

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PRELIMINARY STATEMENT

This brief is submitted by Respondent-Respondent Syracuse Police Benevolent Association, Inc. ("Association") in answer to the brief of Petitioner-Appellant City of Syracuse ("Syracuse" or "City"), dated June 24, 2022 ("City's Brief").

Below, Supreme Court and the Appellate Division correctly decided that the police discipline procedures set forth in the New York Second Class Cities Law ("SCCL") were superseded by the City when it enacted its 1960 City Charter ("1960 Charter"). *City of Syracuse v. Syracuse Police Benevolent Association, Inc.*, 68 Misc. 3d 412 (Sup. Ct., Onondaga Cty. 2020), *aff'd*, 198 A.D.3d 1322 (4th Dep't 2021). The lower courts properly distinguished this Court's decision in *Matter of City of Schenectady v. N.Y. State Pub. Empl. Relations Bd.*, 30 N.Y.3d 109 (2017), holding that the 1960 Charter evinced the City's intent to supersede the SCCL's provisions concerning police discipline and instead subject itself to the Civil Service Law. Accordingly, the courts found and ordered, the City must comply with the parties' lawfully negotiated procedures concerning discipline and arbitrate the challenged grievances under the parties' collective bargaining agreement.

For the reasons stated in its decision, Supreme Court's Order should be affirmed.

COUNTERSTATEMENT OF QUESTION PRESENTED

Question: Did the City's 1960 Charter supersede the otherwise applicable provisions of the SCCL such that police discipline is a mandatory subject of bargaining under the Civil Service Law and the Association's pending grievances challenging discipline on behalf of four members must be arbitrated pursuant to the parties' collective bargaining agreement?

Answer: The courts below correctly held that because the 1960 Charter superseded the SCCL, subjecting the City to the Civil Service Law, police discipline is a mandatory subject of bargaining and the grievances must be arbitrated pursuant to the parties' collective bargaining agreement.

COUNTERSTATEMENT OF THE CASE

A. Procedural Background

This proceeding was commenced pursuant to section 7503 of the Civil Practice Law and Rules ("CPLR") on July 30, 2019 by the City's filing a verified petition to stay arbitration of grievances challenging discipline imposed against four police officers [R. 25-33].[1] 68 Misc. 3d at 413. The Association cross-moved to dismiss the petition, to compel arbitration of the pending disciplinary grievances, for a declaration regarding future disciplinary disputes, and for attorney's fees [R. 297-304]. *Id*.

By decision dated May 11, 2020, Supreme Court (Hon. Deborah Karalunas, Justice) granted the Association's cross-motion to dismiss the petition and compel arbitration and denied it with respect to future disciplinary disputes and the attorney's fees request [R. 6-22]. The court held that the City of Syracuse had not "expressed a specific intent strong enough to justify excluding police from collective bargaining," 68 Misc. 3d at 423 (internal quotation marks omitted), concluding:

> Although provisions of the SCCL regarding police disciplined were not specifically mentioned in the 1960 Charter, there can be no reasonable doubt as to the City of Syracuse's intent to supersede sections 131 of the SCCL, mandate compliance with the Civil Service Law,

[1]References in this form are to the Record on Appeal.

> and authorize arbitration as a means to resolve police disciplinary disputes.

Id. Supreme Court's order and judgement was filed on June 4, 2020 [R. 4-5].

The City appealed the matter to the Appellate Division [R. 1-3]. By order dated October 1, 2021, the Fourth Department unanimously affirmed Supreme Court's order and judgment for the reasons stated by Justice Karalunas [R. 893-94]. *Matter of City of Syracuse* (*Syracuse Police Benevolent Ass'n, Inc.*), 198 A.D.3d 1322 (4th Dep't 2021).

This Court granted the City's motion for leave to appeal on April 26, 2022 [R. 890].

B. Statement of Facts

The Association has been the exclusive bargaining representative of the unit of sworn officers of the Syracuse Police Department for decades. The City and the Association are party to a collective bargaining agreement covering 1998-1999 ("CBA") [R. 38-90], a series of interest arbitration awards covering 2000-2005 [R. 34], and a series of memoranda of agreement covering 2006-2017 [R. 91-120]. *Syracuse PBA*, 68 Misc. 3d at 413.[2]

[2]Although not in the Record before the Court, in fact an interest arbitration award covering 2018-2019 was issued on June 29, 2021 by a duly constituted panel pursuant to Civil Service Law § 209.4 and on February 22, 2022, the parties entered into a memorandum of agreement covering 2020-2022, which was subsequently ratified. In any case, even if no labor agreement between the parties were in effect, the extant terms and conditions would apply pursuant to the *Triborough* provision of the Taylor Law [R. 7]. Civil Service Law § 209-a(1)(e).

The CBA sets forth a procedure for the discipline and the discharge of officers [R. 59-64]. *Id*. Absent a voluntary resolution, a charged officer may elect to challenge the issued discipline or discharge under either section 75 of the Civil Service Law or under the arbitration provisions of the CBA [R. 59-60]. *Id*. at 414.

In April 2019, the Association demanded arbitration of disciplinary grievances submitted by four officers [R. 121-127]. *Id*. at 413, 415. This proceeding followed [R. 23-24].

C. Legal Framework

The proper resolution of the question presented involves an ordering of the historical development of state laws addressing city charters and home rule, the City of Syracuse's charters adopted under those statutes, state law governing public employment rights and obligations, and this Court's line of cases informing the accommodation of statutory policies favoring both local control of police and collective bargaining rights attendant to public employment.

Enacted in 1906, the Second Class Cities Law §§ 1-253 ("SCCL") provided a standard uniform city charter for all cities of the "second class," which was finally defined as a city with a population of 50,000 between and 175,000 as of December 31, 1923 [R. 10]. *Id.* It is undisputed that Syracuse is a second class city under the SCCL's criteria [R. 15]. *Syracuse PBA*, 68 Misc. 3d at 420; *House*

v. Bodour, 256 A.D. 1037 (4th Dep't 1939), *aff'd mem.,* 281 N.Y. 749 (1939). As amended, a provision of the SCCL "shall apply, according to its term, . . . until such provision is superseded pursuant to the Municipal Home Rule Law, was superseded pursuant to the former City Home Rule Law or is or was otherwise changed, repealed or superseded pursuant to law." SCCL § 4.

The SCCL contains detailed provisions governing the authority and procedures for issuing police discipline. Section 131 provides that "[t]he commissioner of public safety shall have cognizance, jurisdiction, supervision and control of the government administration, disposition and discipline of the police department, fire department, buildings department and health department . . . ." The SCCL further provides:

> The commissioner of public safety shall make, adopt and enforce such reasonable rules, orders and regulations, not inconsistent with law, as may be reasonably necessary to effect a prompt and efficient exercise of all the powers conferred and the performance of all duties imposed by law upon him or the department under his jurisdiction. He is authorized and empowered to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the police and fire departments, and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer or member of said departments . . . .

SCCL § 133 (the remainder of section 133 outlines the types of punishment and due process requirements). Section 137 provides for an employee's right to

receive written charges, trials before the commissioner, and rules for the imposition of penalties by the commissioner.

In 1915, the City of Syracuse adopted a charter that was consistent with the SCCL and which included its disciplinary process and procedures set forth in sections 131, and 133, and 137 [R. 621-22, 624-25].

In 1924, the Legislature enacted the (former) City Home Rule Law ("CHR Law"). L. 1924 ch. 363 [R. 822-31]. Unlike the SCCL's provision of a standard uniform charter, the City Home Rule Law authorized cities to adopt their own charters subject to their own needs and wants [R. 828]. CHR Law § 20. The legislation allowed cities to establish their own governing structures, rather than being mandated a charter as the SCCL had done.

In 1925, the Legislature amended section 4 of the SCCL to provide a supersession clause, permitting cities to supersede its provision pursuant to the City Home Rule Law. L. 1925 ch. 392.

In 1935, the City took advantage of the City Home Rule Law to adopt a new charter ("1935 Charter") [R. 659-738]. The 1935 Charter provided in section 2 that, "[s]ubject to the provisions of the City Home Rule Law, any provisions of law, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officers, department, board, body, commission or other city agency, inconsistent with this Charter are hereby

repealed" [R. 661]. Sections 202, 206, and 207 of the 1935 Charter set forth new discipline procedures for officers and members of the Department of Police [R. 711-713] that "nearly mirrored the language of section 133 of the SCCL." 68 Misc. 3d at 419.

In 1958, the Legislature enacted Civil Service Law sections 75 and 76, providing due process and other procedural rights to certain civil service employees in disciplinary matters. Preexisting laws that expressly provided for control of covered "officers or employees" were "grandfathered" under Civil Service Law section 76(4), which provides that nothing in sections 75 and 76 "shall be construed to repeal or modify any general, special or local laws or charters." Civil Service Law § 76(4); L. 1958 ch. 790, as amended.

Two years later, pursuant to the City Home Rule Law, the City replaced the 1935 Charter with the 1960 Charter [R. 739-821], which remains in effect. Section 5-1409, "Chief of police," details that discipline proceedings must be conducted in accordance with Civil Service Law. In relevant part, section 5-1409 provides:

> The chief of police, with the approval of the mayor, shall make, adopt, promulgate and enforce such reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the department of police as may be necessary to carry out the functions of the department. *Disciplinary proceedings against any member of the department shall be conducted in accordance with the rules and regulations of the*

> *department and the provisions of law applicable thereto*, *including the Civil Service Law*.

[R. 787 (emphasis added)].

It was the City's intent to replace all pre-existing laws dealing with police discipline with the rights and procedures set forth in the Civil Service Law. The Common Council minutes describing the 1960 Charter unambiguously indicate: "The charter eliminates special disciplinary provisions for the Departments of Police and Fire. All employees will be disciplined in accordance with the procedures prescribed by the State Civil Service Law. The city will thereby be able to operate under a uniform disciplinary policy for all departments" [R. 886 (emphasis added)]. Thus, in adopting the Civil Service Law through the 1960 Charter, the City granted section 75 and 76 rights to police officers.

Effective January 1, 1964, the Municipal Home Rule Law ("MHR Law") took effect, replacing the repealed City Home Rule Law. The statute was enacted to carry into effect home rule provisions of the newly-adopted article 9 of the State Constitution. MHR Law § 50.1. Local governments are granted the general "power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government" and cities are specifically granted the power to adopt and amend local laws respecting the "powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection

welfare and safety of [the city's] officers and employees" (except to the extent the Legislature has restricted the adoption of such a local law relating to "other than the property, affairs or government of such local government"). MHR Law § 10.1(i) and (ii)(a)(1).

The Legislature amended the SCCL's supersession provision in 1965 to its present form. Thus, a provision of the SCCL applies until it is "superseded pursuant to the municipal home rule law, was superseded pursuant to the former city home rule law is or was otherwise changed, repealed or superseded pursuant to law." SCCL § 4.

In 1967, the Legislature added the "Taylor Law" as article 14 of the Civil Service Law ("CSL"). CSL §§ 200-215. The Taylor Law provides that "[w]here an employee organization has been certified or recognized . . . the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees." CSL § 204(2).

In 2006, this Court issued the first of three decisions addressing the balance of competing public policies, as reflected in the governing statutes, variously favoring both collective bargaining over public employee discipline and local managerial control over police discipline. In *Matter of Patrolmen's Benevolent*

Ass'n of City of New York, Inc. v. New York State Public Employment Relations Board, 6 N.Y.3d 563 (2006), the Court reconciled the ostensible contradiction between the State's policy — as reflected in the at-issue statutes and local laws— "favoring strong disciplinary authority for those in charge of police forces" and the "strong and sweeping policy of the state to support collective bargaining under the Taylor Law." *Id*. at 571.

In *Matter of Auburn Police Local 195, Council 82, AFSCME, AFL-CIO v. Helsby*, 46 N.Y.2d 1034 (1979) (affirming, for reasons stated below, 62 A.D.2d 12 (3d Dep't 1978)), the Court had found that "where Civil Service Law §§ 75 and 76 apply, police discipline may be the subject of collective bargaining," 6 N.Y.2d at 573, and further that "the policy of the Taylor Law prevails, and collective bargaining is required, where no legislation specifically commits police discipline to the discretion of local officials." *Id*. at 571. In the interim, however, three departments of the Appellate Division had held that "where such legislation is in force, the policy favoring control over the police prevails, and collective bargaining over disciplinary matters is prohibited." *Id*. at 571-572 (citing *Matter of City of New York v. MacDonald*, 201 A.D.2d 258, 259 (1st Dep't 1994); *Matter of Rockland County Patrolmen's Benevolent Ass'n v. Town of Clarkstown*, 149 A.D.2d 516, 517 (2d Dep't 1989); *Matter of Town of Greenburgh (Police Ass'n of*

Town of Greenburgh), 94 A.D.2d 771, 771-72 (2d Dep't 1983); *Matter of City of Mount Vernon v. Cuevas*, 289 A.D.2d 674, 675-76 (3d Dep't 2001)).

Patrolmen's Benevolent Association dealt with such laws in two jurisdictions. First, the New York City Charter vests the police commissioner with the "cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department" and the New York City Administrative Code grants the commissioner the discretionary power to issue punishment. 6 N.Y.3d at 573-574. Although these are local laws, both were originally enacted by the State Legislature and thus "reflect the policy of the State that police discipline in New York City is subject to the Commissioner's authority." *Id*. at 574. Second, the Town of Orangetown relied on the Rockland County Police Act, in which the Legislature had similarly given the town board "the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department." *Id*.

The decisive point was the clear, statutory language mandating local management to have the power to determine discipline. The Court explained:

> These legislative commands are to be obeyed even where the result is to limit the scope of collective bargaining. The issue is not, as the unions argue, whether these enactments were intended by their authors to create an exception to the Taylor Law; obviously they were not, since they were passed decades before the

> Taylor Law existed. The issue is whether these enactments express a policy so important that the policy favoring collective bargaining should give way, and we conclude that they do.

6 N.Y.2d at 576.[3]

The Court underscored, however, that it is careful statutory analysis which determines the outcome in particular cases and thus local control of police discipline will not necessarily predominate: "as *Auburn* demonstrates, the need for authority over police officers will sometimes yield to the claims of collective bargaining." *Id*.

The Court next took up the topic in a different context in *Matter of Town of Wallkill v. CSEA*, 19 N.Y.3d 1066 (2012), where the town had adopted a law setting forth disciplinary procedures for police that differed from those contained in the labor agreement between it and the police officers union. Local Law 2 purported to replace the contractual arbitration process with the right to a hearing before a management-selected hearing officer whose recommended decision on the misconduct charges and any penalty was subject to review and final determination by the town board. 19 N.Y.3d at 1068.

[3]As the Fourth Department recently put it, the *Patrolmen's Benevolent Ass'n* Court "ultimately crafted a judicial compromise: police discipline would be subject to collective bargaining, except in municipalities with a preexisting law that vested local officials with the sole and exclusive power to discipline police officers." *Matter of Rochester Police Locust Club v. City of Rochester*, 196 A.D.3d 74, 80-81 (4th Dep't), *leave to appeal granted*, 37 N.Y.2d. 915 (2021).

Finding *Patrolmen's Benevolent Association* dispositive, the Court held the town had properly exercised its authority under section 155 of the Town Law, which commits to towns "the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department." *Id*. at 1069.

Five years later, in *Matter of City of Schenectady v. New York State Public Employment Relations Board*, 30 N.Y.3d 109 (2017), the Court again considered the issue, this time under the SCCL. In 2008, the City of Schenectady enacted new police disciplinary procedures different from those contained in the parties' expired collective bargaining agreement, which changes PERB determined violated the employer's bargaining obligations under the Taylor Law. Following *Patrolmen's Benevolent Association* and *Town of Wallkill*, *the City of Schenectady* Court held that the SCCL "specifically commits police discipline to the commissioner and details the relevant procedures . . . . The Taylor Law's general command regarding collective bargaining is not sufficient to displace the more specific authority granted by the Second Class Cities Law . . . [and thus] police discipline is a prohibited subject of bargaining in Schenectady." 30 N.Y.3d at 115-116.

The Court rejected PERB's argument that section 4 of the SCCL demonstrated the Legislature's "statutorily planned obsolescence" of that law and held that it had not been implicitly repealed or superseded by the Taylor Law. *Id.* at 4. The Court explained:

> Article 9 of the Second Class Cities Law governs disciplinary procedures for police officers in cities of the second class, whereas the Taylor Law generally requires public employers to negotiate but does not specifically require police disciplinary procedures to be a mandatory subject of collective bargaining. There is no express statutory conflict between the two laws; the only conflict is in the policies that they represent, and this Court has already resolved that policy conflict in favor of local control over police discipline.

Id. at 117. Thus, because the SCCL was enacted prior to section 75 of the Civil Service Law and Schenectady's charter had not been superseded by the Taylor Law, the Court found the SCCL's discipline procedures were "grandfathered" and the parties' contract procedures did not apply.

ARGUMENT

THE CITY IS NOT PROHIBITED BY THE SCCL FROM FOLLOWING THE NEGOTIATED DISCIPLINE PROCEDURES

A. *City of Schenectady* is Not Dispositive of the SCCL's Control Over Syracuse's Discipline Procedures

The City asserts in its appeal that the SCCL governs police discipline in the City of Syracuse and this Court's decision in *City of Schenectady* controls. City's

Brief, pp. 15-19. As Justice Karalunas properly found, however, *City of Schenectady*, is distinguishable from the facts of this case.[4]

There is no dispute that *City of Schenectady* is the most directly relevant governing precedent in evaluating whether the City of Syracuse must continue to bargain over and comply with its long standing agreements concerning police discipline policy and procedure. Unquestionably, the Court's decision sets the framework and method for appropriately applying the SCCL and the Taylor Law to covered cities. Contrary to the City's protestations, however, the operative charter provisions of the two cities are dispositively different. While police discipline is a *prohibited* subject of bargaining in Schenectady, it is, as the lower courts correctly decided, a *mandatory* subject in Syracuse.

In 1958, the Legislature enacted Civil Service Law §§ 75 and 76, which generally govern disciplinary proceedings involving civil service employees, including police officers. But, as the Court held in *Patrolmen's Benevolent Association* and has continued to apply, preexisting laws that specifically provide for local control of discipline of police, were "grandfathered" pursuant to section

[4]*City of Schenectady* does not directly answer whether a city of the second class may supersede the SCCL's disciplinary procedures by adopting alternative discipline procedures in accordance with the former City Home Rule Law or the Municipal Home Rule Law. Indeed, such an argument could not have even been made in that case because the City of Schenectady's charter, unlike the 1960 Charter at issue here, does not materially deviate from the SCCL's discipline procedures and does not state clearly that it completely supersedes inconsistent provisions of law [R. 876].

76(4), which provides that: nothing in sections 75 and 76 "shall be construed to repeal or modify" preexisting laws (including charters) concerning discipline of covered employees. *Patrolmen's Benevolent Association*, 6 N.Y.3d at 573; *Town of Wallkill*, 19 N.Y.3d at 1069; *City of Schenectady*, 30 N.Y.3d at 114. It is only because the statutes providing for unilateral local control thus remained in full force and were unaffected by sections 75 and 76 that the subsequent enactment in 1967 of the Taylor Law, with its attendant bargaining obligations, did not alter the municipalities' preexisting control over police discipline.

But the SCCL contains another provision that must be applied to reach the legally correct outcome here. Thus, the SCCL provides that it "shall apply, according to its term . . . until such provision is superseded pursuant to the municipal home rule law, was superseded pursuant to the former city home rule law or is or was otherwise changed, repealed or superseded pursuant to law." SCCL § 4. Both the (former) City Home Rule Law and the Municipal Home Rule Law provide that local laws may supersede specified provisions of state statutes. As the lower courts found, that is precisely what the City of Syracuse did with respect to sections 131 and 133 of the SCCL, when it adopted the 1960 Charter, which remains in effect. 68 Misc. 3d at 425.

First, the 1960 Charter unequivocally supersedes the City's prior charters, including the 1915 Charter (which had essentially mirrored the SCCL's provisions

concerning police discipline) and the 1935 Charter (which replaced the public safety commissioner with a chief of police and otherwise largely tracked the SCCL). 68 Misc. 3d at 418-419.

Second, the 1960 Charter preliminary states that it is a "local law of the city of Syracuse providing a *new* charter for the city of Syracuse, and *generally superseding* acts and local laws *inconsistent* therewith" [R. 740 (emphasis added)]. The intent to supersede inconsistent laws is repeatedly indicated. Thus, section 1-102 states: "Subject to the provisions of the City Home Rule Law, *any provisions of law*, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officer, department, board, body, commission or other city agency, *inconsistent with this charter are hereby repealed*." [R. 740 (emphasis added)]. Just to be sure, section 9-106 likewise provides: "All laws and parts of laws in force when this charter shall take effect are hereby *superseded* so far as they affect the city of Syracuse, to the extent that the same are inconsistent with the provisions of this charter, and no further" [R. 820 (emphasis added)]. 68 Misc. 3d at 419-420.

Third, section 5-1409, "Chief of police," details that disciplinary proceedings must be conducted in accordance with Civil Service Law. In relevant part, that section provides:

> The chief of police, with the approval of the mayor, shall make, adopt, promulgate and enforce such

> reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the department of police as may be necessary to carry out the functions of the department. *Disciplinary proceedings against any member of the department shall be conducted in accordance with the rules and regulations of the department and the provisions of law applicable thereto*, *including the Civil Service Law*.

[R. 787 (emphasis added)]. 68 Misc. 3d at 424.

Fourth, it was undoubtedly the City's intent to replace all pre-existing laws dealing with discipline, including the SCCL's provisions, with the different and inconsistent procedures set forth in the Civil Service Law. The Common Council minutes describing the 1960 Charter unambiguously indicate: "The charter eliminates special disciplinary provisions for the Departments of Police and Fire. All employees will be disciplined in accordance with the procedures prescribed by the State Civil Service Law. The city will thereby be able to operate under a uniform disciplinary policy for all departments" [R. 886]. *See* 68 Misc. 2d at 424. Thus, in adopting the 1960 Charter, the City subjected itself to the Civil Service Law and granted its police officers rights under sections 75 and 76.

Fifth, as Supreme Court noted, the City's own police manual "expressly authorizes arbitration of police disciplinary disputes." 68 Misc. 3 at 424-425 (citing Syracuse Police General Rules & Procedure Manual Art. 4, §§ 7.17, 8.22 and 10.00) [R. 540, 552-53, 555].

All of these factors led Justice Karalunas to conclude:

> Unlike the local legislative structure in *Matter of the Town of Wallkill* or *Matter of the City of Schenectady*, the City of Syracuse, through passage of its 1960 City Charter, as bolstered by the CBA and the Syracuse Police General Rules and Procedure Manual, evinced its intent to supersede the SCCL provisions regarding police discipline, and to require compliance with the Civil Service Law's collective bargaining provisions.

68 Misc. 3d at 425.

The holding of Supreme Court and the Fourth Department is a faithful adherence to, and is not in any way inconsistent with, *City of Schenectady*. This Court has repeatedly indicated that, among municipalities, differing results will obtain, depending on the particular facts and laws at issue. 30 N.Y.3d at 116 (SCCL "was intended to remain in force unless it is changed or repealed pursuant to law"); 30 N.Y.3d at 118 ("it is quite clear . . . that some local counterparts have the right to bargain about police, and some do not"); *Patrolmen's Benevolent Ass'n*, 6 N.Y.3d at 576 ("the need for authority over police officers will sometime yield to the claims of collective bargaining").

B. The SCCL Authorized the City of Syracuse to Supersede its Provisions Through the City Home Rule Law and the Municipal Home Rule Law

Section 4 of the SCCL allows for it to be superseded by the Municipal Home Rule Law and the former City Home Rule Law. First, in 1925, the Legislature amended section 4 of the SCCL to provide a supersession clause that specifically

authorized the law to be superseded pursuant to the City Home Rule Law. 1924 ch. 363; L. 1925 ch. 392. This amendment was intended to authorize the second class cities to amend their charters "pursuant to" the then-extant City Home Rule Law. Notably, the City Home Rule Law provided that, "[a]ll existing charters and other laws relating to the property, affairs and government of cities, and other laws relating to the property, affairs and government of cities, and other laws which are subject to amendment or change . . . shall continue in force until repealed, amended, modified or superseded, in accordance with the provisions of this chapter and of the constitution." CHR Law § 36.

Similarly, the 1965 amendment to section 4 of the Second Class Cities Law provides that "[a] provision of this chapter shall apply . . . until such provision is superseded pursuant to the municipal home rule law, was superseded pursuant to the former city home rule law or is or was otherwise changed, repealed or superseded pursuant to law." L. 1965 ch. 755. The Legislature's use of the phrase "was superseded pursuant to the former city home rule law" clearly demonstrated its continued understanding that, prior to 1965, cities of the second class had the right to supersede the SCCL's standard charter through local charters adopted

pursuant to the former City Home Rule Law.[5] As the court below properly found: "From this language, there can be no dispute 'that the Legislature did not intend to put any of its provisions beyond supersession by city home rule.'" *Syracuse PBA*, 68 Misc. 3d at 424 (quoting *Fullerton v. City of Schenectady*, 285 A.D. 545, 547 (3d Dep't), *aff'd*, 309 N.Y. 701 (1955).

Thus, unlike *City of Schenectady* where the Court reasoned that the Taylor Law did not explicitly or implicitly supersede the SCCL, section 4 of the Second Class Cities Law unambiguously authorized municipalities to amend their charters pursuant to both the Municipal Home Rule Law and the former City Home Rule Law to supersede the SCCL's discipline procedures.[6]

Finally, the case law interpreting section 4 supports that a city of the second class is authorized pursuant to both the former City Home Rule Law and the Municipal Home Rule Law to supersede individual provisions of the Second Class Cities Law. *Carlino v. City of Albany*, 118 A.D.2d 928 (3d Dep't 1986) (finding

[5]The Municipal Home Rule Law further provides that, "[a]ll existing provision of laws, charters, and local laws not specifically repealed by this chapter shall continue in force until lawfully repealed, amended, modified or superseded." MHR Law § 56.

[6]The Court in *City of Schenectady* acknowledged that the SCCL could be changed or repealed pursuant to law, but held that the Taylor Law did not do so explicitly or implicitly. 30 N.Y.3d at 116. *See also Matter of Rochester Locust Police Club*, 196 A.D.3d at 83 ("*Schenectady* thus clearly contemplates the potential repeal of a preexisting law concerning police discipline that would have otherwise qualified for the [*Patrolmen's Benevolent Ass'n*]-created exception to mandatory collective bargaining.")

local law was constitutional and superseded SCCL § 244); *Fullerton*, 285 A.D. at 547 (same); *see also Attorney General Opinion* 83-84 (1983).

C. The 1960 Charter Effectively Superseded the SCCL Discipline Provisions

As explained below, the 1960 Charter effectively superseded the SCCL provisions concerning police discipline.

Again, the 1960 Charter unequivocally states the intent to supersede the City's prior charters, including the 1915 Charter which had incorporated the SCCL. The 1960 Charter preliminary states that it is a "local law of the city of Syracuse providing a new charter for the city of Syracuse, and *generally superseding* acts and local laws *inconsistent* therewith" [R. 740 (emphasis added)]. Section 1-102 of the 1960 Charter goes on to state that: "Subject to the provisions of the City Home Rule Law, *any provisions of law*, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officer, department, board, body, commission or other city agency, *inconsistent with this charter are hereby repealed*." [R. 740 (emphasis added)]. Just to be sure, Section 9-106 likewise provides: "All laws and parts of laws in force when this charter shall take effect are hereby *superseded* so far as they affect the city of Syracuse, to the extent that the same are *inconsistent* with the provisions of this charter, and no further" [R. 820 (emphasis added)].

The City nonetheless argues that the discipline procedures found in SCCL, were not superseded by section 5-1409 which contains the discipline procedures in the 1960 Charter, contending that because section 5-1409 does not specifically cite sections 131 and 133, the SCCL's procedures remain effective. City's Brief, pp. 25-28.

Section 22 of the Municipal Home Rule Law provides:

> In adopting a local law changing or superseding any provision of a state statute or of a private local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law. . . .

MRH Law § 22(1).[7]

"While section 22(1) does not, by its terms, mandate technical adherence to any one of the specifically described procedures for amending or superseding a State law, we have required substantial adherence to the statutory methods to evidence a legislative intent to amend or supersede those provisions of a State law

[7]The City contends that the supersession analysis should be performed under the ostensibly more stringent requirements of the City Home Rule Law because it was the home rule statute in effect when the 1960 Charter was adopted. City's Brief, pp. 21-22. This is in error, however, as the City Home Rule Law was repealed upon adoption of the Municipal Home Rule Law. It would be nonsensical to apply the standard set forth in a repealed law on the question whether suppression had been adequately demonstrated. Moreover, it is well established that, absent "special facts," a court must decide a case "upon the law as it exists at the time of the decision." *Matter of Pokoik v. Silsdorf*, 40 N.Y.2d 769, 772 (1976); *accord Demisay, Inc. v. Petito*, 31 N.Y.2d 896, 897 (1972); *Boardwalk & Seashore Corp. v. Murdock*, 286 N.Y. 494 (1941).

sought to be amended or superseded." *Turnpike Woods, Inc. v. Town of Stony Point*, 70 N.Y.2d 735, 737 (1987). This Court explained that "[t]he purpose of section 22 is to compel definiteness and explicitness, to avoid the confusion that would result if one could not discern whether the local legislature intended to supersede an entire state statute, or only part of one—and, if only a part, which part." *Id*. at 738 (citing *Barham v. City of Rochester*, 246 N.Y. 140, 150 (1927)). Thus, the local law in question did not supersede a provision of the Town Law because the former did not expressly amend or supersede the latter, "nor [did] it contain any declaration of intent to do so." *Id*. *Accord Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 435 (1989).

The touchstone, therefore, is whether in enacting the local law the legislative body has created a "reasonable certainty" as to the intent to supersede a particular statutory provision. *See Matter of Viscio v. Town of Wright*, 42 A.D.3d 728, 730-31 (3d Dep't 2007) (finding no supersession because language creating local law "fail[ed] to create a certainty that it intended to supersede Town Law § 282"); *Port Chester Police Ass'n v. Village of Port Chest*er, 291 A.D.2d 389, 389 (2d Dep't 2002) ("a reading of the entire text of the local legislation . . . reveals that it is impossible to determine with reasonable certainty whether any portion of [the state statute] was intended to be superseded").

Where, however, the local law's enactment leaves "no reasonable doubt" as to the intent to supersede state law, there is adequate adherence to section 22. *See Henderson Taxpayers Ass'n v. Town of Henderson*, 283 A.D.2d 940, 941 (4th Dep't), *leave denied*, 96 N.Y.2d 719 (2001) (finding "no reasonable doubt" that local law was intended to supersede at-issue statutory provision); *Miller v. City of Albany*, 278 A.D.2d 647, 648 (3d Dep't 2000) (although local law failed to explicitly state which statute was being superseded, there could be "no reasonable doubt as to what statute was intended to be superseded"); *Taylor Tree, Inc. v. Town of Montgomery*, 251 A.D.2d 673 (2d Dep't 1998) (absence of specific reference to superseded default provision was not fatal because "a reading of the moratorium indicates that it satisfies the 'reasonable certainty' test").

The 1960 Charter repeatedly states that the *entire* charter supersedes previous *inconsistent* laws. Read with section 5-1409's express intent to be bound by the Civil Service Law, which at the time included the plainly inconsistent provisions of sections 75 and 76, and giving due regard to the Common Council meeting minutes specifically stating the City's intent, there can be no reasonable doubt as to the supersession of the inconsistent disciplinary procedures of the SCCL. *Syracuse PBA,* 68 Misc. 3d at 424-426. Thus, the City is not entitled to a wholesale reversion to the SCCL's discipline procedures and it may not refuse to follow the CBA's discipline procedures because the City adopted the Civil Service

Law's discipline protections and unquestionably intended to replace the differing provisions of the SCCL.[8] *See Miller*, 278 A.D.2d at 648.

The City contends that it has always provided explicit specific supersession language whenever it enacts a local law with the intent of superseding a provision of the SCCL. City's Brief, pp. 25-26. But the two examples it offers are inapposite. The first, Local Law 5-1927, was passed under the 1915 Charter, which, unlike the 1960 Charter, did not contain the repeated general expressions of supersession of the SCCL. While the second, Local Law 11-1998, did state that it was superseding the SCCL, it was in fact amending section 8-118 of the 1960 Charter, not the SCCL. Since 1960, no other announcement of supersession of the SCCL has been made in any amendment of the 1960 Charter. The plain reason for this is the 1960 Charter's references to supersession are adequate to supersede the prior charters, including the SCCL.[9]

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[8]A conclusion that section 5-1409's Civil Service Law protections do not govern the City's discipline procedures because they did not supersede the SCCL discipline procedures, would by implication also nullify other portions of the 1960 Charter and inescapably lead to an absurd and ungovernable result. Much of the governing structure of the City was changed by the 1960 Charter without additional references to the supersession of previous laws and charters. Comparing the SCCL to the 1960 Charter demonstrates that they have different term limits for the council members and the mayor, the number of council members needed to override a veto, the City's fiscal year, appointment of council vacancies, and who sets salaries. Hence, a ruling in favor of the City would bring into legal question a substantial number of the City's actions for the last 60 years, as well as the City's current governing structure.

[9]The City cites four cases for the proposition that the SCCL determines the powers and obligations of the City (*Tupper v. City of Syracuse*, 93 A.D. 3d 1277 (4th Dep't 2012); *Board of Educ. v. Common Council of Syracuse,* 50 A.D.2d 138 (4th Dep't 1975); *Berman v. Syracuse,* 14 Misc. 2d 893 (Sup. Ct. Onondaga Cty. 1958); *Langan v. Syracuse,* 12 Misc. 2d 392 (Sup. Ct.

D. The Changes made to the 1960 Charter are Distinguishable from the Changes that were made to Schenectady's Charter

Relying upon *City of Schenectady,* the City argues that the SCCL discipline procedures apply to Syracuse because the governmental changes made in Schenectady were similar to changes that were made to Syracuse's government structure under the 1960 Charter. City's Brief, pp. 28-34. This facile contention is simply not true. As discussed below, the differences in the 1960 Charter are readily distinguishable from those at issue in *City of Schenectady*.

City of Schenectady held that certain organizational changes to Schenectady's charter alone did not cause the SCCL charter to be superseded.[10] However, while Schenectady's charter has not mirrored the SCCL's standard charter since 1934 [R. 846], Schenectady's charter and the SCCL are entirely consistent in the respect critical to this case in that both authorize Schenectady to discipline police without regard to the Civil Service Law; the differences between them are essentially cosmetic. And, unlike the 1960 Charter at issue here, the Schenectady charter did not unequivocally state that it was superseding all inconsistent laws or expressly state its intent to be bound by the Civil Service Law.

Onondaga Cty. 1958)). City's Brief, pp. 18-19. But none of these has any bearing on whether the 1960 Charter effectively superseded the SCCL's provisions concerning police disciplinary procedures.

[10]These administrative changes in the Charter were directed at the office of the commissioner of public safety, the City Manager and the mayor.

E. The City is Required by its Charter to Follow the Civil Service Law

The City contends that the 1960 Charter does not require the City to follow Civil Service Law, including the Taylor Law, when it comes to bargaining unit member discipline and that its specific reference to the Civil Service Law within the discipline procedures was meant merely to be a "guide." City's Brief, p. 35. As explained below, the 1960 Charter requires that the City follow the Civil Service Law's discipline procedures and it also authorized the parties to negotiate procedures which must be adhered to.

The 1960 Charter unambiguously requires that Civil Service Law be followed. Section 5-1409 of the 1960 Charter specifically provides that "[d]isciplinary proceedings against any member of the department *shall* be conducted in accordance with the rules and regulations of the department and the provisions of law applicable thereto, *including the Civil Service Law"* (emphasis added). Plainly, the 1960 Charter's mandate is not just "guidance" that can be ignored whenever convenient for the City. Rather, the City incorporated a detailed and specific set of discipline procedures that the City must follow pursuant to the Civil Service Law.

When the 1960 Charter became law, Civil Service Law sections 75 and 76 were extant having been enacted two years earlier and these sections were explicitly incorporated into the discipline procedures as the wording of the 1960

Charter states and the Common Council's minutes illustrate. Thereafter, the Taylor Law authorized the City and the Association to negotiate different discipline procedures which now include authorizing a neutral arbitrator to resolve disputes pursuant to the CBA. *Patrolmen's Benevolent Ass'n of City of New York, Inc.*, 6 N.Y.3d 563; Civil Service Law § 76(4), §§ 200-215.

The City's contention that the negotiated discipline procedures are inapplicable because the 1960 Charter was enacted prior to the 1967 enactment of the Taylor Law is also wholly off the mark. City's Brief, pp. 35-36. In adopting the Civil Service Law through the 1960 Charter with respect to police officer discipline, the City granted bargaining unit members rights and due process protections pursuant to sections 75 and 76. At that point, the SCCL's inconsistent provisions were superseded; they had no further effect. Subsequently, Civil Service Law section 76[11] and the Taylor Law authorized the Association and the City to negotiate different due process discipline procedures. With the Taylor

[11]Section 76 provides:

> Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division. Such sections may be supplemented, modified or replaced by agreements negotiated between the state and an employee organization pursuant to article fourteen of this chapter. …

CSL § 76(4).

Law's passage in 1967 and thereafter the parties' agreeing to discipline procedures in their subsequent collective bargaining agreements starting in the late 1960s, these negotiated provisions, rather than sections 75 and 76, set forth the discipline procedures for bargaining unit members in Syracuse. CSL §§ 200-215; *Patrolmen's Benevolent Ass'n of City of New York, Inc.*, 6 N.Y.3d at 573; *Auburn Police Local 195, Council 82, AFSCME*, 46 N.Y.2d at 1035-1036. All of this flows perforce from the 1960 Charter's wholesale adoption of the Civil Service Law, including the already-extant sections 75 and 76.

Finally, the City contends that the Court below erred because section 135 of the SCCL references the Civil Service Law and the *City of Schenectady* Court nonetheless held that the Taylor Law did not implicitly repeal the SCCL's provisions regarding discipline. City's Brief, pp. 36. This argument is a non-starter. Section 135 provides:

> *Membership.*—No person shall be appointed to membership in the police, or fire departments of the city, or continue to hold membership therein, who is not a citizen of good moral character, who has ever been convicted of a felony, who cannot understandingly read and write the English language, and who shall not have resided in the city during the two years next preceding his appointment. *The commissioner shall make all appointments, promotions and changes of status of the officers and members of the police and fire departments in accordance with the provisions of the civil service law of the state, except as otherwise provided herein*. In making promotions, seniority and meritorious service in the department, as well as superior capacity, as shown by

> competitive examination, shall be taken into account. Individual acts of bravery may be treated as acts of meritorious service, and the relative weight therefore shall be fixed by the municipal civil service commission. No member of the police or fire departments shall hold any other office nor be employed in any other department of the city government.

SCCL § 135 (emphasis added).

Manifestly, section 135 addresses only the appointment, promotion, and civil service status changes[12] of members of the police and departments; it does not address discipline. In contrast to that section, section 137 of the SCCL entitled "Discipline," makes no reference to the Civil Service Law. Indeed, Civil Service Law sections 75 and 76 were not enacted until 1958, decades after enactment of the SCCL in 1906. Civil Service Law sections 75 and 76 were, however, in effect at the time the 1960 Charter was passed by referendum and the drafters acknowledged the intent to adopt these due process protections when the Common Council members stated in their Minutes that "All employees will be disciplined in accordance with the procedures prescribed by the State Civil Service Law" [R. 886].

[12]A change of Civil Service status would be a change from probationary status to a temporary or permanent appointment within the department.

CONCLUSION

For the above-stated reasons and authorities, it is respectfully submitted that the June 4, 2020 order and judgment of the Supreme Court and the October 1, 2021 order of the Appellate Division must be affirmed.

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NEW YORK STATE COURT OF APPEALS
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Dated: August 10, 2022

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